

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

June 5, 2013

This meeting was called to order at 6:00 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Russell Moore, Scott Spendlove, Sandy Naegle, and Necia Christensen

Those Absent:

N/A

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Nichole Camac

WEST VALLEY CITY LEGAL DEPARTMENT

Brandon Hill, Assistant City Attorney

AUDIENCE:

Approximately seven (7) person was in the audience.

VARIANCES

B-3-2013

Johanson Variance

6851-6859 West 3500 South

R-1-8 Zone

REQUEST:

Brett and Allison Johanson are requesting a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage of a lot in the R-1-8 zone be 80 feet. The applicants are requesting a frontage variance of approximately 8.97 feet in order to adjust existing property lines to accommodate each existing single family dwelling on its own parcel.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property is known as parcels 14-34-131-005 and 14-34-131-006. These parcels are not part of a formal subdivision. Currently, there are two single family dwellings, and Salt Lake County records indicate that at least one of the dwellings was constructed in 1930.
- ☐ The applicants approached staff about the possibility of creating two independent parcels from the existing parcels so that each single family dwelling would have its own unique property. Staff is unsure how the narrow parcel near the west boundary was created, but it was in existence prior to the City's incorporation.
- ☐ By virtue of having two parcels, the property owner can apply for a lot line adjustment to move the property line to create a more uniform parcel. One of the requirements however, is that all zoning ordinances be satisfied. The combined width of both parcels is approximately 151 feet. In order to meet the frontage requirements of the R-1-8 zone, each parcel would need to be 80 feet in width. As this is not possible, staff suggested a variance from the Board of Adjustment. Based on a survey provided by the applicants, the parcel needing the variance would be 71.03 feet in width. Thus the variance requires of 8.97 feet.
- ☐ Staff explained the variance criteria and that the Board of Adjustment would need to evaluate the criteria in relation to the specifics of the property. The applicants believe that the variance criteria is satisfied and subsequently made application to the Board.
- ☐ As noted earlier, there are two existing dwellings on these parcels. Fortunately, the proposed placement of the property line between structures would leave sufficient distance between dwelling and property lines so that all other requirements of the R-1-8 zone will be satisfied.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a lot line adjustment application.

□ **ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Steve Lehman presented the application.

Discussion: Russ Moore asked if three parcels are being made from this property. Steve replied yes and indicated that this will allow the Johanson's the ability to sell the existing homes. He indicated that the objective is to create sufficient area for the two properties to have their own parcel. He explained that the rear property will require a lot line adjustment and will need to be adjoined with the property to the south to prevent a parcel that is landlocked.

Applicant:

Brett Johanson
3505 S El Serito Drive
Salt Lake City, UT

Brett Johanson

Mr. Johanson provided an explanation of the 5 criteria required by the Board of Adjustment.

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Johanson stated that the purpose of the zoning ordinance is to promote health, safety, and welfare of the citizens of West Valley City. He indicated that the unreasonable hardship for him is the inability to own or sell the existing homes individually.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Johanson stated that unlike other 'R-1-8' properties this property has been historically configured with two homes on two lots that do not conform to the current zoning ordinance.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Johanson stated that the ability to hold or sell a single home is a substantial property right possessed by other property in the same zoning district. He indicated that literal enforcement of the zoning ordinance would require him to sell both homes or none at all.

4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Johanson stated that granting the variance would support the objectives of the General Plan by allowing him to have one home per lot which is in support of public interest as well.

5. **The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Johanson stated that approving this variance would provide one home per lot and would allow him the same rights as other neighbors in the area.

Discussion: Mr. Johanson stated that he wants the property to fit in with the surrounding neighborhood.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Motion

Mr. Moore moved for approval based on the responses to the criteria.

Ms. Naegle seconded the motion.

Discussion: Necia Christensen stated that this was a very good presentation and she agrees with the criteria provided by the applicant. Scott Spendlove stated that he is having a difficult time determining if there is a reasonable hardship. Ms. Christensen stated that the second home was built on a single property which creates a problem. Sandy Naegle agreed and added that the lot is very small. Steve Lehman stated that zoning showed up in the 1950's and the majority of the City was not zoned until the 1960's. He stated that two dwellings on one parcel didn't violate any ordinances during this time. Steve added that two pieces of property and a lot line adjustment will be in more conformance to the General Plan. He indicated that the City always likes to promote ownership rather than renters.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Chairperson Christensen	Yes

Motion for approval carries - B-3-2013– Unanimous

NON CONFORMING USE

B-4-2013

Rodolfo Flores – NCU Determination

3405 South 4400 West

R-1-8 Zone

REQUEST:

Rodolfo Flores, has filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination in order to continue keeping agricultural animals on the property noted above.

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

BACKGROUND:

- ☐ The subject property is located at 3405 South 4400 West. It is also known as Parcel Number 15-30-451-012. The property is not part of a formal subdivision and is approximately .26 acres in size. The property is bordered on the north, south and east by property zoned R-1-8.
- ☐ This application is being presented to the Board of Adjustment at the request of the property owner. On May 8, 2013, the property owner was given notice by the City's Community Preservation Department that keeping of agricultural animals, more

specifically, chickens is not allowed in a residential zone. The options provided to Mr. Flores were to remove the animals, or seek a non conforming use determination from the Board of Adjustment.

- ☐ According to a 1965 County zoning map, the property was zoned R-2-A. This zone would have required a minimum 2 acre parcel and it would have permitted farm animals. In 1971, the property was zoned R-2-8 and in 1980 at the time of the City's incorporation, the property was zoned R-1-8. The two residential zones would not have allowed the keeping of animals. According to County records, the home was constructed in 1946.
- ☐ The non conforming use determination process is unique in that the Board does not generally have hard data to support the claim that animals have existed from a given period of time. In most cases, the Board will rely on testimony from nearby land owners and visual evidence from the subject property and adjacent properties. In this case, the applicant has provided 3 letters in support of the application. These letters have been attached to the analysis for your review. Along with the letters, photos of the property have been provided for the Board's review.
- ☐ Generally, the size of the property including adjacent properties, is a historical indication that agricultural land uses could have existed on and around the subject property. The attached aerial photograph shows that adjacent properties, including the properties to the south and east are large in size and could have easily been used for agricultural purposes in the past.

ORDINANCE SUMMARY:

Section 7-18-106(3) of the West Valley City Land Use Development and Management Act reads:

(3) Non-conforming Use of Land. A non-conforming use of land lawfully existing on the effective date of this Chapter may be continued provided such non-conforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the non-conforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

- ☐ The applicant is not requesting an expansion of a non-conforming use. They are requesting a determination that the existing use, i.e., the keeping of animals be allowed to continue on this property.

Steve Lehman presented the application.

Discussion: Scott Spendlove asked if there is a point system on properties that determines how many animals are allowed. Steve replied yes and stated that chickens are worth one point each and with the size of this property the applicant could have up to about 50 chickens.

Applicant:

Rodolfo Flores
3405 S 4400 W

Rodolfo Flores

Mr. Flores stated that raising chickens is his hobby and is something that also provides food for him. He indicated that he enjoys sharing eggs with the neighbors and providing entertainment for children in his community. Mr. Flores stated that his neighbors enjoy waking up to crowing and volunteered in submitting letters to the Board of Adjustment in support of this application. Necia Christensen asked how long Mr. Flores has lived on the property. He replied 10 years and indicated that his step brother lived here before him and had chickens as well.

Neutral

Shauna and Jesse Valladolid
3381 S 4400 W

Shauna Valladolid

Shauna Valladolid stated that she is concerned with the chickens being contained. She indicated that they often roam free and dig holes in her yard and flower bed. She stated that she thinks it's great that Mr. Flores has chickens as his hobby but requested that they be taken care of and contained more than they are.

Jesse Valladolid

Jesse Valladolid stated that the chickens can be a noise concern in the morning and evening. He stated that if they can be contained and kept quiet it would help significantly. He stated that they should probably be in another area of the City where there aren't as many residences.

Rodolfo Flores

Mr. Flores stated that he will keep them contained and stated that they are very valuable.

Ms. Christensen asked if there is a law to prevent noise. Steve replied that chickens are required to be kept in agricultural zones. He stated that there have been many debates among residents in the City to allow chickens in residential areas. Scott Spendlove asked if the County prohibited livestock in residential zones prior to the City's incorporation. Steve replied yes and stated that the keeping of livestock animals is not allowed on residential property throughout the County. He indicated that the point system would apply to this property so there will only be a

certain number of animals allowed. Brandon Hill stated that chickens had to have been legal on this property at one point and must have remained on the property continuously (without longer than a year break) for a non-conforming use to be approved. Russ Moore stated that there is a neighbor who provided a letter and stated that she has lived there 37 years and there have been chickens on the property. Ms. Christensen stated that she remembers animals in the area when she was younger as well.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Ms. Spendlove moved for approval

Mr. Moore seconded the motion.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Chairperson Christensen	Yes

Motion Carries - B-4-2013– Unanimous Vote

OTHER

The minutes from **April 17, 2013** were **approved**.

There being no further business the meeting adjourned at 6:48 p.m.

Nichole Camac, Administrative Assistant